

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6073

PETITION OF ASHK ADAMIYATT
(Hearing held MAY 18, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, July 8, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Sections 59-C-176-7(d)(1) and 59-B-5.3. The petitioner proposes the construction of a new single-family dwelling that requires a 5.10 foot variance as it is within 26.60 feet of the established front building line. The required established building line is 31.70 feet.

Kazem Alavi, a builder, appeared with the petitioner at the public hearing. Bruce Steinhardt and Joseph Homes, adjoining neighbors, appeared in opposition to the variance request.

The subject property is Lot 28, Block C, Rollingwood Terrace Subdivision, located at 7723 Rocton Avenue, Chevy Chase, Maryland, 20815, in the R-90 Zone (Tax Account No. 160700695101).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a new single-family dwelling.
2. Mr. Alavi testified that in August 2004, he received a building permit for the construction of a two-story addition. Mr. Alavi testified that during the construction, it was determined that certain exterior walls of the house were not structurally sound and would need to be demolished for the integrity of the new construction.
3. Mr. Alavi testified that during an inspection by the Department of Permitting Services (DPS), it was determined that over 50% of the original structure had not been saved. The zoning regulations, in this instance, require that the new construction must be treated as new house, and not as a new addition. Mr. Alavi testified that the new

house will be built on the footprint of the original house and will not expand the footprint. Mr. Alavi testified that the new construction will extend the non-connecting carport walls so that the two walls will connect. See, Exhibit No. 5(c) [basement plan].

4. Mr. Alavi testified that the application of the established building line disproportionately impacts the property, as the petitioner's house is sited closer to the street than other houses on the street. Mr. Alavi testified that several of the other homes on the street do not meet the established building line requirement. See, Exhibit No. 4(b) [determination of front setback].
5. Mr. Steinhardt testified that the original construction was not properly advertised because it started as a second-story addition, and now it is for a new house. Mr. Steinhardt testified that the existing house is already located in the setback and that the stairs of the new construction will project further in the streetscape. Mr. Steinhardt testified that the new house will have a higher roof-line than the existing homes in the immediate area and will not be in harmony with the other homes.
6. Mr. Steinhardt testified that part of his objection to the variance request is that house, as proposed, will project into the public open space and that it will have a greater visual impact on the neighboring properties. Mr. Homes testified that the design of the new house will not be in harmony with the other homes in the neighborhood.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The subject property has an existing house that is being replaced with a new house. The Department of Permitting Services (DPS) determined that more than 50% of the original house was demolished and that the new construction would be subject to an established building line. The new house is being rebuilt on the existing footprint of the prior house. The new construction does not expand the footprint of the prior house. The existing house is

sited closer to the street than others house on the street and is therefore more severely affected by the application of established building line than neighboring properties. The application of an established building line to the subject property adversely impacts the new construction.

The Board finds that these are exceptional circumstances peculiar to the petitioner's property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship on the property owner.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance request for the construction of a new single-family dwelling on the same footprint as the existing house is the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that new single-family dwelling will not be detrimental the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 5.10 feet from the required 31.70 foot established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 5(a) through 5(e).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Wendell M. Holloway, in agreement, and with Donna L. Barron and Allison Ishihara Fultz, Chair, in opposition, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 8th day of July, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

